OPINION
75-216

February 19, 1975 (OPINION)

The Honorable Earl. S. Strinden
Majority Floor Leader
House of Representatives
State Capitol
Bismarck, ND 58505

Dear Representative Strinden:

This is in reply to your letter of February 18th requesting an opinion relative to House Bill 1403, which provides for increased benefits to certain persons who are presently receiving workmen's compensation benefits. You inquire whether the bill, as it presently exists, interferes with contractual arrangements.

Section 1 of House Bill 1403 provides, in part, as follows:

> "Any workmen's compensation claimant who has been awarded permanent total disability benefits and any widow or widower who is eligible to receive workmen's compensation death benefits shall be eligible for supplementary workmen's compensation benefits under this Act." (Emphasis added)

Sections 2 through 4 of the bill provide for the establishment of a supplementary benefit fund from which such payments will be made. The bill is silent on the source of moneys for the fund. If such moneys come from increased premiums paid by employers, or should there be other direct affect on the contractual agreement that exists, then the following comments are pertinent.

Section 1-02-10 of the North Dakota Century Code states that "No part of this code is retroactive unless it is expressly declared to be so." The Supreme Court of North Dakota, in the case of Gimble v. Montana-Dakota Utilities Company 44 N.W.2d. 198 (1950) stated that:

> "* * *an act of the legislature is presumed to be prospective unless the legislature clearly manifests a contrary intention."

Examining the above-quoted language of House Bill 1403, it would appear that, at least insofar as claimants who have been determined to be totally disabled are concerned, the bill indicates that persons who were disabled before the enactment of the bill into law would be eligible for supplementary benefits.

At 12 Am. Jur. Constitutional Law, Section 389, the following statement of the law is made:

> "A Workmen's Compensation Act is contractual in its nature, and therefore any legislation which purports to change a substantial term of a contract operative at the time of the plaintiff's injury would impair the obligation of such contract and fall within the ban of the Constitution."

At 16A C.J.S. Constitutional Law, Section 349, it is stated that:

> "Legislation construed as applying to injuries which occurred before its passage, at which time a different compensation law was in effect, and changing that law, would impair the obligation of contracts."

While North Dakota has no reported court decisions relative to this question, courts in other states have established a rule of law which provides that rights and obligations of interested parties under workmen's compensation laws become vested at the date of a compensable accident, and that liability cannot be destroyed by legislation which imposes a new obligation or additional liability. Such legislation would be contrary to Article I, Section 10 of the United States Constitution, which prohibits a state from passing any law impairing the obligation of contracts (Section 16 of the North Dakota Constitution contains similar language). Noffsker v. K. Barnett and Sons 384 P.2d. 1022 (New Mexico Supreme Court, 1963); Tennessee Coal and Iron Division, U.S. Steel Corporation v. Hubbert 110 So.2d. 260 (Alabama Supreme Court, 1959); Yaeger v. Delano Granite Works 84 N.W.2d. 363 (Minnesota Supreme Court, 1957); Salmon v. Denhart Elevators 30 N.W.2d. 644 (South Dakota Supreme Court, 1948), and Warner v. Zaiser 239 N.W. 761 (Minnesota Supreme Court, 1931) are the more definitive cases on this subject.

Therefore while all acts of the legislative assembly are presumed constitutional until declared otherwise by a court having jurisdiction to do so, it would be our opinion that the present language of House Bill 1403 leaves considerable doubt as to whether it is the intent of the legislature that the provisions thereof be applied retroactively to persons whose interests had vested previous to the enactment of the bill into law (assuming that event would occur). If the intent is not to provide for retroactive application, the language should be changed to reflect the clear intent of the legislature.

If the intent is that the provisions should have retroactive effect, then there would appear to be considerable case law indicating that the act would be unconstitutional.

Sincerely,

ALLEN I. OLSON

Attorney General